Re LEE PHEE SOO, DECD.

[O. C. J. (Ambrose J.) February 6, 1960]

[Singapore — Suit No. 66 of 1957]

Gifts — Transfer of shares — Transferor resident outside sterling area — Death of transferor before permission was granted under Finance Regulations, 1946, by Controller of Finance or his deputy — Whether gifts complete — Finance Regulations, 1946, regs. 4(2) and 10(1).

L.P.S., the deceased, who was domiciled in the Republic of China and resident in Amoy, held 911 shares in a Singapore rubber company. On June 28, 1946, while residing outside the sterling area, he executed a transfer of 455 of these shares in favour of his son L.S.C., and the remaining 456 shares in favour of another son L.S.K. It was agreed between the parties that the transfers were by way of gifts. By reg. 10(1) of the Finance Regulations, 1946, the transfer of any security, the holder of which was resident outside the sterling area, required the permission of the Controller of Finance or by his deputy. By reg. 4(2) that permission might be granted by the Controller retrospectively. No permission had been granted by the Controller or his deputy for the transfers of the shares prior to the execution of the transfers or prior to the transferor's death. Subsequently, however, the transfers were duly approved by the Controller. The question arose as to whether the gifts of the shares by the transferor to L.S.K. and L.S.C. by virtue of the transfers executed on June 28, 1946, were incomplete at the date of the transferor's death in so far as no approval for the transfers was obtained from the Controller of Finance under the Finance Regulations, 1946, prior to the execution of the transfers or prior to the transferor's death.

Held: the gifts of the shares were complete at the date of the transferor's death by reason of the retrospective operation of the Controller's permission. Accordingly the shares did not form part of the estate of the transferor undisposed of at the date of his death.

Cases referred to:—

(1) *Re Fry*, [1946] Ch. 312; [1946] 2 All E.R. 106.
(2) *Re Rose*, [1949] Ch. 78; [1948] 2 All E.R. 971.
(3) *Milroy* v. *Lord* (1862) 4 De G. F. & J. 264; 31 L.J. Ch. 798.
(4) *Re Rose*, [1952] Ch. 499; [1952] 1 All E.R. 1217.

SPECIAL CASE STATED.

T. W. Ong for the plaintiffs.

R. L. Eber for the defendant.

Cur. Adv. Vult.

Ambrose J.: This is a special case stated by the parties to this suit for the determination of three questions of law.

The facts set out in the special case and the inferences of fact drawn by me from the documents stated in it are as follows. Lee Phee Soo, who was domiciled in the Republic of China, resided at Kulangsu, Amoy, and died there, intestate, on the 25th November, 1947. The defendant, Lee Seng Chong, is his son. The original plaintiff, Lee Eng Jin, was his daughter. She died on the 24th February, 1957. On the 13th December, 1957, it was ordered by the Court that Estate & Trust Agencies (1927) Ltd., the administrators of her estate, be added as plaintiffs and that the proceedings in this suit be carried on between the new plaintiffs and the defendant.

The intestate was the registered owner of 911 shares in Lee Rubber Company Limited, which is a company incorporated in Singapore. On the 28th June, 1946, while residing outside the sterling area, he executed a transfer of 455 of these shares in favour of his son, Lee Seng Chin. The consideration is stated in the transfer to be the sum of $45,500 paid by the said Lee Seng Chin. It is agreed between the parties that no such consideration passed and that the transfer was by way of a gift.

On the same day, the intestate executed a transfer of the remaining 456 shares in favour of another son, Lee Seng Kee. The consideration is stated in the transfer to be the sum of $45,600 paid by the said Lee Seng Kee. It is agreed between the parties that no consideration passed and that the transfer was by way of a gift.

Stamp duty was paid on the transfer to Lee Seng Kee on the 4th July, 1950, and on the transfer to Lee Seng Chin on the 9th August, 1950.

Letters of Administration of the estate of the intestate were issued to the defendant on the 23rd July, 1952, pursuant to an order made by this Court on the 25th August, 1950. The defendant duly paid estate duty on the 911 shares as gifts inter vivos made by the intestate to the said Lee Seng Chin and Lee Seng Kee and deemed to be included in the property passing on the death of the intestate.

After the death of the intestate, the transfers executed by the intestate were produced by the defendant to the secretary of the said Lee Rubber Company Limited for registration. The secretary refused to register the transfers as the transferor was already dead.

The defendant then applied to the Controller of Finance for approval of the transfer of 456 shares to Lee Seng Kee executed by the intestate. This was given on the 10th September, 1952. The defendant as administrator of the estate of the intestate executed a transfer of the 456 shares to Lee Seng Kee on the 14th October, 1952. Stamp duty was paid on the transfer on the 23rd October, 1952. This transfer was duly registered by the company.

The defendant subsequently applied to the Controller for approval of the transfer of 455 shares to Lee Seng Chin executed by the intestate. This was given on the 11th May, 1957. The defendant, as administrator, executed two transfers in respect of the 455 shares to Lee Seng Chin on the 29th May, 1957. Stamp duty was paid on the two transfers on the 30th July, 1957. These transfers were duly registered by the company.

The first question propounded for the opinion of the Court is:

> Were the gifts of the shares by the intestate to Lee Seng Kee and Lee Seng Chin under and by virtue of the transfers executed by the intestate on the 28th June, 1946, incomplete at the date of death in so far as no approval for the transfers was obtained from the Controller of Finance under the Finance Regulations, 1946, before the date of death of the intestate or before the date of execution of the transfers ?

Regulation 10(1) of the Finance Regulations, 1946, provides as follows:—

"Subject to any exemption which may be granted by order of the Controller or his deputy, no person shall, except with permission granted by the Controller or his deputy, transfer any security, either on his own behalf or on behalf of any other person, unless —

(a) the holder of the security and, if the holder is a nominee, the person for whom he is acting as nominee are resident in the sterling area; and

(b) the transferor has produced to the person to whom the security is to be transferred or to his agent such evidence of the facts aforesaid as may be prescribed by instructions issued by the Controller or his deputy;

and no person shall, except with such permission as aforesaid, acquire any security, either on his own behalf, or on behalf of any other person, unless such evidence as aforesaid has been produced to him or to his agent."

Regulation 10(6) provides:

"Subject to any exemptions which may be granted by order of the Controller or his deputy, no person shall, except with permission granted by the Controller or his deputy —

(a) enter any transfer of securities in any register or book in which securities are registered or inscribed, unless there has been produced to him such evidence that the transfer does not involve a contravention of this Regulation as may be prescribed by instructions issued by the Controller or his deputy . . . ."

It is contended on behalf of the plaintiffs that the intended gifts were incomplete as no permission had been granted under the Finance Regulations by the Controller of Finance or his deputy for the transfers of the shares prior to the execution of the transfers by the intestate. The plaintiffs rely on the case of *Re Fry*,[1] in support of their contention. The facts in that case were these. Fry owned shares in an English company. He was domiciled in Florida. He executed a transfer of these shares, expressed to be by way of gift, to his son and sent it to the company for registration. Under Regulation 3A of the Defence (Finance) Regulations, 1939, the transfer of any securities or any interest in securities in which a person resident outside the sterling area had any interest immediately before the transfer was prohibited unless permission from the Treasury had been obtained; and registration of any such transfer was prohibited without permission from the Treasury. The company therefore refused to register the transfer unless and until the necessary permission had been obtained from the Treasury. The forms necessary to obtain the permission were sent to Fry to sign and he returned them duly signed, but died before permission was obtained. It was held that the intending donor had not done everything required of him in order to divest himself of the legal and equitable title to the shares and that the attempted gift therefore failed.

In my opinion, the case of *Re Fry*[1] does not conclude the matter. Regulation 4(2) of the Finance Regulations provides that permission may be granted by the Controller of Finance retrospectively. Regulation 4(2) is in these terms —

"Any exemption, permission, authorisation or consent, made or granted under these Regulations may be declared to be retrospective to such date as may be specified and thereupon the like consequences shall ensue as if the exemption, permission, authorisation or consent had been made or granted on the day to which it is so declared to be retrospective."

It is said by counsel for the plaintiffs that the approvals given by the Controller on the 10th September, 1952, and 11th May, 1957, referred to the transfers made by the defendant and not the transfers made by the intestate. Counsel relies on paragraph 11 of the special case which reads:

"Application for the approval of the Controller of Finance for the transfer of shares was not made until after the date of death of the intestate and the Controller of Finance duly approved the transfers of the said shares executed by the defendant as follows:—

(1) 16.9.52 — 456 shares to Lee Seng Kee

(2) 11.5.57 — 455 shares to Lee Seng Chin.

A copy of the letter dated the 6th day of March, 1959 from the Deputy Controller of Foreign Exchange is hereto annexed and marked 'G'."

In my view, however the inference to be drawn from the Deputy Controller's letter is that the Controller's approvals were given in respect of the transfers made by the intestate. The letter is as follows:—

"With reference to your letter of 27th February, I have to say that the Finance Regulations, 1946, were in force at the time the late Lee Phee Soo disposed of 911 shares in Lee Rubber Co. Ltd. by gift to his two sons.

An examination of the Controller's files shows that approvals were given for the transfer of the shares as follows:—

(1) 16.9.52 — 456 shares to Lee Seng Kee

(2) 11.5.57 — 455 shares to Lee Seng Chin."

It is further said by counsel for the plaintiffs that Regulation 4(2) provides that the Controller's permission can operate retrospectively only if it is explicitly stated to be retrospective to a specified date. In my opinion the Deputy Controller's letter shows that the approvals were intended to operate retrospectively to the date of the transfers made by the intestate. I hold, therefore, that the permission granted by the Controller operated retrospectively to the 28th June, 1946.

It is further said by counsel for the plaintiffs that under requirement (b) in Regulation 10(1) even when permission is granted by the Controller no person shall transfer any security unless the transferor has produced to the person to whom the security is to be transferred or to his agent evidence of the permission. It is said that as this was not done prior to the transfers the retrospective permission cannot cure the defect. I am unable to accept this construction of the Regulation. In my view, if retrospective permission is granted by the Controller, the requirements (a) and (b) in Regulation 10(1) do not apply. In my judgment, the failure to obtain the required permission before the execution of the transfers by the intestate is not fatal.

It is contended by counsel for the defendant that as the transfers executed by the intestate were in the proper form, the gifts were complete in equity on the execution of the transfers, and the donees were able to complete the legal title by registration on the books of the company

after the death of the donor. He bases his contention on *Re Rose* (1949).[2] The facts of that case were these. A transfer of shares by way of gifts was duly executed in accordance with the company's regulations and handed over to the transferee with the share certificates. The company refused, during the lifetime of the transferor, to register the transfer but did so after his death. It was held by Jenkins J., that the gift was perfected at the date of the transfer since the donor had then done everything that was necessary to be done by him to transfer the shares. *Re Fry*,[1] was distinguished on the ground that in that case the donor had not done all in his power, according to the nature of the property given, to vest the legal property in the donee, the flaw in the transaction being the donor's failure to obtain the necessary consent of the Treasury to the transfer of shares. Jenkins J., distinguished *Milroy* v. *Lord*,[3] on the same ground, adding that the imperfection was due to the fact that the wrong form of transfer was used for the purpose of transferring certain bank shares.

Counsel for the defendant also relies on *Re Rose* (1952).[4] In that case the facts were that transfers of shares in proper form were duly executed and handed over with the share certificates to the transferees: the transfers were presented sufficiently long before the donor's death for the gifts, if then completed, to have escaped liability for estate duty, but were not registered until later. It was held by the Court of Appeal that the gifts were perfected at the date of the transfer since the donor had then done everything that was necessary to be done by him to transfer the shares. This, as the Court of Appeal hinted, in effect modifies the effect of *Milroy* v. *Lord*, as previously understood, by recognizing that in some circumstances a purported transfer by assignment may take effect by way of trust, for pending registration the donor presumably does become a trustee for the donee.

It is clear from the two cases of *Re Rose* that as between the donor and donee the equitable ownership in the shares passes as soon as the donor has done all that has to be done by him. This normally involves handing over an executed transfer and the share certificate. I take the view, therefore, that the proposition contended for by counsel for the defendant is too wide. This does not, however, affect my answer to the first question, which is as follows. The gifts of the shares by the intestate to Lee Seng Kee and Lee Seng Chin under and by virtue of the transfers executed by the intestate on the 28th June, 1946, were not incomplete at the date of death in so far as no approval for the transfers was obtained from the Controller of Finance under the Finance Regulations, 1946, before the date of death of the intestate or before the date of execution of the transfers.

I pass on to the second question, which is worded thus:

"In the event of the answer to question (1) being in the affirmative, did the defendant have any lawful right to confirm the gifts by transferring the shares to Lee Seng Kee and Lee Seng Chin?"

As I have answered the first question in the negative, the second question does not arise. I infer, however, from the wording of the second question that, in the event of my answer to the first question being in the negative, the parties are agreed that the defendant did have a lawful right to confirm the gifts by transferring the shares to Lee Seng Kee and Lee Seng Chin.

That brings me to the last question which is:

"Did the said shares form part of the residuary estate of the intestate as at the date of death of the intestate?"

As the point taken by the plaintiffs has been decided against them, and as no further point has been raised by them, I hold, on the evidence before me, that the gifts of the shares were complete at the date of the death of the intestate by reason of the retrospective operation of the Controller's permission. It follows, therefore, that the shares did not form part of the estate of the intestate undisposed of at the date of his death.

I order that the costs of both parties be taxed on the higher scale as between solicitor and client and paid out of the estate of the intestate.

Order accordingly.

Solicitors: *Laycock & Ong; Eber & Tan.*

AMAR SINGH v. CHIN KIEW

[C.A. (Thomson C.J., Hill & Good JJ. A.) February 10, 1960]

[K. L. — F.M. Civil Appeal No. 33 of 1959]

Damages — Negligence — Fatal Accident — Loss of expectation of life — Assessment of damages for loss of support to family of deceased — Civil Law Ordinance 1956, s.7.

Costs — Unnecessary matter included in appeal record.

The fixation of damages is so largely a matter of opinion or of impression that differences of calculation or assessment are to be expected. It is, to some extent an exercise of judicial discretion. The Court of Appeal will not therefore give preference to their own figure simply because they disagree with the figure arrived at by the trial Judge; they will only interfere if they are satisfied that the Judge has acted on a wrong principle of law or has misapprehended the facts, or has, for those or other reasons made a wholly erroneous estimate of the damage suffered.

Although the trial Judge may have failed to make allowance for some factors, so long as the figure arrived at will fairly compensate the family of the deceased it ought to stand.

Observations or costs of unnecessary matter included in appeal record, p. 79 letter I.

Cases referred to:—

(1) *Davies* v. *Powell Duffryn Associated Collieries, Ltd.* [1942] A.C. 601.
(2) *Heatley* v. *Steel Co. of Wales, Ltd.* [1953] 1 All E.R. 489, 490.
(3) *Panicker* v. *Chwee May Kwong* [1958] M.L.J. 136.
(4) *Scott* v. *Musial* [1959] 3 W.L.R. 437, 441.
(5) *Nam Thiam Siew* v. *Chuang Wai Lan* [1959] M.L.J. 126.